

REMARKS

Claims 1-44 are pending in the application, claims being canceled and claims being newly added herein. Claims 1, 12, 27, and 38 are the only independent claims.

Claims Rejections - 35 U.S.C. §§ 102 and 103

Claims 1-9, 11-20, 22, 25-33, and 35-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0221261 (Torbet et al.) in view of U.S. Patent Application Publication No. 2003/0182728 (Chapman et al.).

Claims 10, 21 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0221261 (Torbet et al.) in view of U.S. Patent Application Publication No. 2003/0182728 (Chapman et al.) and further in view of U.S. Patent Application Publication No. 2003/0014819 (Richardson).

Claims 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0221261 (Torbet et al.) in view of U.S. Patent Application Publication No. 2003/0182728 (Chapman et al.) and further in view of U.S. Patent No. 6,353,950 to Bartlett et al.

In response to the continued rejection of the claims under § 103(a) of the Patent Statute, applicants have amended independent claims 1, 12, 27, and 38 herein to provide a better definition of the invention. More particularly, applicants have amended the claims to clarify that the contour of a pillow's top face is automatically varied in response to variation of a pose (rotational configuration: flat or side) of a user on a mattress. This feature of applicants' invention is not obvious from the references relied on by the

Examiner and in particular is not obvious in view of the published Torbet application (“Torbet”) and the published Chapman application (“Chapman”).

Torbet discloses a mattress system wherein inflatable bladders disposed under foam cushions at different points along a mattress are differentially inflated in order to relieve a user of discomfort felt at pressure points, especially the shoulders and the hips (see paragraph 0004), and to correct or compensate poor body alignment (paragraph 0005). It does not appear that Torbet et al. are concerned about discomfort of the head due to excessive pressure. However, Torbet et al. do disclose an embodiment wherein an inflatable lift (12-5 in Figure 19) is placed under the head portion of a mattress. However, this feature does not alter a contour of a top face of a pillow. The pillow of the Torbet application appears to be a conventional pillow.

The Chapman application discloses an inflatable support disposable on a mattress for reducing the incidence of bed sores. The support incorporates a plurality of inflatable cells or bladders disposed side-by-side, which, in a preferred embodiment, are subjected to alternating degrees of pressure so as to provide relief to different areas of a patient’s body surface at different times. Chapman specifically discloses inflatable cells in a head zone (Zone 4) of the support. These head cells are inflated or deflated in response to fluid pressure in the head cells (see paragraph 0035).

The combination of Chapman with Torbet cannot result in applicants’ claimed invention. One of ordinary skill in the art familiar with the teachings of Chapman and Torbet would not be motivated to provide a pillow having an upper surface variable in contour in response to variations in the pose of the user on an underlying mattress.

Applicants respectfully contravene the Examiner's position that one of ordinary skill in the art would be motivated to shrink the entire pad of Chapman to the size of a pillow. One of ordinary skill in the art would not be motivated to make such a change because the device of Chapman shrunk to pillow size would not accomplish the goals and objects of the Chapman disclosure. A pillow by itself would not relieve bedsores as desired by Chapman et al.

Moreover, if one of ordinary skill in the art combining the teachings of Chapman attempted to provide the mattress of Torbet with a pillow having bladders or cells which are inflated and deflated, those cells would most likely be automatically inflated and deflated pursuant to a predetermined schedule, and not with regard to the pose of the user. Pursuant to the main embodiment of Chapman et al., this design would relieve the pressure felt by the user at different points of the skin.

To vary the inflation pressures of inflatable cells or bladders in a head support in accordance with the pose of the user on a mattress would be contrary to the intended purpose and function of the Chapman device. Where a user maintains the same pose for an extended period, bed sores would result if the balloons are inflated and deflated pursuant to the pose of the user on the mattress.

Finally, Chapman mentions (but does not thoroughly describe) an embodiment wherein the support pad is "static." In either case, Chapman teaches that the inflation of head support cells is determined in accordance with the level of pressure in the head support cells (paragraph 0035). Thus, were one of ordinary skill following the teachings of Chapman to provide a pillow with inflatable cells on the mattress of Torbet, the pillow

cells would be inflated or deflated in response to the pressure within the pillow cells, not with respect to the pose of the user on the mattress.

Claims 39-44 Applicants respectfully traverse the Examiner's rejection of these claims as being unpatentable over the teachings of the Torbet and Chapman applications.

For each of these claims, the Examiner states that "it is not invention to change size or degree of thing or of any feature of machine or manufacture; there is no invention where change does not involve different concept, purposes or objects, but amounts to doing the same thin in substantially the same way with better results."

The Examiner's application of this quote is improper and inapposite. Each of applicants' claims 39-44 recites specific structure that is not obvious from the teachings of Torbet and Chapman. The recited subject matter is not merely a change in size or degree. Instead, applicants describe specific structure that is different from and more specific than the vaguely disclosed sensors of Torbet and Chapman. Moreover, just because applicants have the same general goal or purpose as that of one or more prior art references does not mean that applicants' invention is per se unpatentable. Otherwise, there would hardly be such a thing as an improvement patent. (And most patents are directed to subject matter representing improvements in known technology.)

Applicants' claims 39-44 do describe different ways of reaching goals that may or may not be the same as the goals of Torbet or Chapman. However, the Examiner must look at the specific limitations of applicants' claims and indicate where in the prior art those limitations are to be found or suggested. The Examiner has provided no such indication.

For each claim 39-44, the Examiner also requires applicants to show criticality. This requirement is inapposite to the claims under consideration. Criticality has never been a requirement where one recites different structures, different elements, or different steps than the structures, elements, and steps of the prior art. Criticality is relevant only when the claims set forth a difference in degree or a difference in amount. Applicants' claims 39-44 set forth a difference in kind, not a difference in degree or amount.

Applicant respectfully maintains that claim 1 distinguishes the invention over the prior art and particularly over the art relied on by the Examiner in rejecting the claims of the instant application.


Conclusion

For the foregoing reasons, independent claims 1, 12, 27, and 38, as well as the claims dependent therefrom (particularly claims 39-44), are deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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